

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #7	CCRB Case #: 201802192	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 01/19/2018 8:58 AM	Location of Incident: § 87(2)(b)	Precinct: 83	18 Mo. SOL 7/19/2019	EO SOL 7/19/2019	
Date/Time CV Reported Tue, 03/20/2018 2:35 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 03/20/2018 2:35 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Peter Chiofolo	03960	954640	067 PCT
3. DI Elliot Colon	00000	905982	067 PCT
4. DTS Daniel Keane	03448	932844	ESS 10
5. DTS Dennis Mogelnicki	4467	937118	ESS 10
6. POM Hector Casillas	30712	952552	067 PCT
7. SGT Charles Schwartz	05458	947478	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Kenneth Paek	4270	940541	E S U
2. DTS Terry Avent	01029	932280	E S U
3. DT2 Matthew Vahey	07959	907488	E S U
4. SSA Donald Abrams	00085	921890	E S U
5. DTS Patrick Barry	00249	917283	E S U
6. DTS Eric Miller	3190	944812	ESS 02
7. DTS Shawn Soler	05036	927537	E S U
8. DTS Lenno Hendricks	04817	925441	E S U
9. POM Matthew Kelly	09342	960754	067 PCT
10. POM David Yusim	08592	962183	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Peter Chiofolo	Abuse: Police Officer Peter Chiofolo entered § 87(2)(b) § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.DTS Dennis Mogelnicki	Force: Detective Dennis Mogelnicki pointed his gun at § 87(2)(b) § 87(2)(b)	§ 87(2)(b)
C.DTS Daniel Keane	Force: Detective Daniel Keane struck § 87(2)(b) § 87(2)(b) with a police shield.	§ 87(2)(b)
D.DTS Daniel Keane	Force: Detective Daniel Keane used physical force against § 87(2)(b) § 87(2)(b)	§ 87(2)(b)
E.DI Elliot Colon	Abuse: Deputy Inspector Elliot Colon refused to show the search warrant to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
F.SGT Charles Schwartz	Abuse: Sergeant Charles Schwartz refused to show the search warrant to § 87(2)(b) § 87(2)(b)	
G.POM Peter Chiofolo	Abuse: Police Officer Peter Chiofolo refused to show the search warrant to § 87(2)(b) § 87(2)(b)	
H.POM Hector Casillas	Abuse: Police Officer Hector Casillas refused to show the search warrant to § 87(2)(b) § 87(2)(b)	
I.POM Hector Casillas	Abuse: Police Officer Hector Casillas refused to show the search warrant to § 87(2)(b) § 87(2)(b)	
J.DI Elliot Colon	Discourtesy: Deputy Inspector Elliot Colon spoke discourteously to § 87(2)(b) § 87(2)(b)	
K. Officers	Abuse: Officers searched § 87(2)(b) § 87(2)(b) in Brooklyn.	
L.POM Hector Casillas	Abuse: Police Officer Hector Casillas threatened to arrest § 87(2)(b) § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint via the CCRB's online website on March 20, 2018.

On January 19, 2018, at approximately 8:58 AM, an ESU team entered § 87(2)(b) in Brooklyn in order to execute a search warrant obtained by PO Peter Chiofolo of the 67th Precinct (**Allegation A: Abuse of Authority**, § 87(2)(g)). The warrant was for the § 87(2)(b) apartment, where § 87(2)(b) resided with his parents, § 87(2)(b) and § 87(2)(b). § 87(2)(b) was on the § 87(2)(b) landing, outside of the apartment, when the ESU officers entered. PO Dennis Mogelnicki of ESU allegedly pointed his handgun at § 87(2)(b) bringing the muzzle of the gun into contact with her temple (**Allegation B: Force**, § 87(2)(g)). Other members of the ESU team continued past § 87(2)(b) entering the § 87(2)(b) apartment (also **Allegation A**). Inside of § 87(2)(b)'s bedroom, Det. Daniel Keane of ESU allegedly struck § 87(2)(b) in the face with a ballistic shield (**Allegation C: Force**, § 87(2)(g)) and then, while § 87(2)(b) lay on the ground, allegedly placed a foot on § 87(2)(b)'s face (**Allegation D: Force**, § 87(2)(g)).

After ESU officers secured the apartment, DI Elliot Colon, Sgt. Charles Schwartz, PO Chiofolo, and PO Hector Casillas of the 67th Precinct entered the apartment (also **Allegation A**). § 87(2)(b) asked each of these officers to show him a copy of their search warrant, but they allegedly refused to do so (**Allegation E: Abuse of Authority**, § 87(2)(g); **Allegation F: Abuse of Authority**, § 87(2)(g); **Allegation G: Abuse of Authority**, § 87(2)(g); **Allegation H: Abuse of Authority**, § 87(2)(g)). PO Casillas also allegedly refused to show a copy of the search warrant to § 87(2)(b) § 87(2)(b) (**Allegation I: Abuse of Authority**, § 87(2)(g)). DI Colon also allegedly told § 87(2)(b) to "Shut the fuck up" (**Allegation J: Discourtesy**, § 87(2)(g)). The 67th Precinct officers then searched the apartment (**Allegation K: Abuse of Authority**, § 87(2)(g)).

Officers placed both § 87(2)(b) and § 87(2)(b) § 87(2)(b) in handcuffs, and brought them out of the apartment to wait in a vehicle outside. There, PO Casillas allegedly told § 87(2)(b) that if he was not truthful about the items located within the apartment, § 87(2)(b) would be arrested (**Allegation L: Abuse of Authority**, § 87(2)(g)).

Ultimately, PO Chiofolo arrested § 87(2)(b) for possession of forged financial instruments, an imitation firearm, and marijuana, and § 87(2)(b) § 87(2)(b) for possession of an imitation firearm and marijuana. § 87(2)(b) was not arrested or summonsed.

There is no video associated with this case.

Findings and Recommendations

Allegation A—Abuse of Authority: Police Officer Peter Chiofolo entered § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation K—Abuse of Authority: Officers searched § 87(2)(b) § 87(2)(b) in Brooklyn.

It is undisputed that at approximately 8:58 AM on January 19, 2018, an ESU team entered the § 87(2)(b) apartment at § 87(2)(b) in Brooklyn, and that officers assigned to the 67th Precinct then searched the apartment.

§ 87(2)(b) (Board Review 01), § 87(2)(b) (Board Review 02), and § 87(2)(b) § 87(2)(b) (Board Review 03) stated that after ESU officers entered the apartment, they placed § 87(2)(b) and § 87(2)(b) § 87(2)(b) in handcuffs. § 87(2)(b) also stated that officers took him to the floor. 67th Precinct officers then entered the apartment. They removed § 87(2)(b) and § 87(2)(b) § 87(2)(b) from the apartment. § 87(2)(b) remained in the living room while 67th Precinct officers searched the apartment. Ultimately, § 87(2)(b) and § 87(2)(b) § 87(2)(b) were placed under arrest.

PO Chiofalo (Board Review 04) confirmed that he obtained a no-knock search warrant for the § 87(2)(b) apartment at § 87(2)(b) in Brooklyn. Further, he confirmed that an ESU team entered the apartment and apprehended § 87(2)(b) and § 87(2)(b) § 87(2)(b) within, and that 67th Precinct officers then searched the apartment.

Section 690.50 of the New York State Criminal Procedure Law governs the lawful execution of search warrants. It states that a police officer may enter and search a location for which they have a valid search warrant; that officers may do so without notice if expressly authorized on the search warrant; and that officers may forcibly enter a location (Board Review 05).

Search warrant § 87(2)(b) (Board Review 06) bears the address § 87(2)(b) § 87(2)(b), Brooklyn, NY. The warrant was issued in § 87(2)(b) on § 87(2)(b) and was signed by the § 87(2)(b). The warrant was for a firearm and included a no-knock provision. The language on the warrant required that it be executed within ten days of the date of its issuance. As noted, it is undisputed that the warrant was executed on January 19, 2018.

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Allegation B—Force: Detective Dennis Mogelnicki pointed his gun at § 87(2)(b)

§ 87(2)(b) stated that she was on the § 87(2)(b) landing, outside of her apartment, cleaning and smoking a cigarette, when the ESU team entered the building and began to ascend the stairs. Approximately twelve officers then began to ascend the stairs. When Det. Mogelnicki reached the top of the stairs, he approached § 87(2)(b) alone. The other officers proceeded past him into § 87(2)(b)'s apartment. § 87(2)(b) was leaning over the banister, looking down the stairs, and Det. Mogelnicki approached her from behind. He did not say anything to her. § 87(2)(b) did not turn toward him or try to keep him away from her. Det. Mogelnicki immediately took hold of § 87(2)(b)'s left hand and placed a handgun to her right temple. The muzzle of the gun was pressed against her skin of her temple. Det. Mogelnicki told her to drop her cigarette and tapped her right hand. When she dropped the cigarette, Det. Mogelnicki lowered the gun. He had held it against her temple for about two seconds total. Det. Mogelnicki then placed § 87(2)(b) in handcuffs. § 87(2)(b) did not know if any of the other officers saw these interactions between herself and Det. Mogelnicki.

Both § 87(2)(b) and § 87(2)(b) § 87(2)(b) were inside of the apartment and were not in a position to see § 87(2)(b)'s interaction with Det. Mogelnicki.

Det. Mogelnicki (Board Review 07) did not recall the incident in question. During the CCRB interview, he reviewed the ESU Warrant Execution Supplemental Report pertaining to this incident (Board Review 08), according to which he apprehended § 87(2)(b) within the second-floor hallway. He did not recall this interaction and did not recognize the name § 87(2)(b) or a photograph of § 87(2)(b). Det. Mogelnicki's assignment during the entry was "Tools and handcuffs." He was also armed with a pistol. He stated that some entries required him to carry tools in both hands, whereas others would leave him one hand free with which to carry his gun. However, he did not recall whether or not he entered § 87(2)(b) with his gun drawn. Det. Mogelnicki was assigned to the ESU A-Team from early-January of 2018 until mid-March of 2018. During that time, he participated in the execution of roughly 100 search warrants.

Ultimately, although he did not recall this incident, Det. Mogelnicki denied placing the muzzle of a gun against § 87(2)(b)'s temple. He stated that this action would not be typical, and that he would remember doing so. Further, he stated that it would never be proper or tactical to do so, as the gun would not function properly if the muzzle were placed directly against any object.

Neither Det. Keane (Board Review 09) nor Det. Vahey (Board Review 10) of ESU, who also participated in this search warrant execution, recalled the incident in question. They were both familiar with Det. Mogelnicki and denied ever seeing him place a gun against a woman's head. For his part, Det. Vahey stated that he would have remembered such an occurrence had he witnessed it.

The 67th Precinct officers interviewed in regard to this incident – DI Colon (Board Review 11), Sgt. Schwartz (Board Review 12), PO Casillas (Board Review 13), and PO Chiofalo – each stated that they remained outside of § 87(2)(b) until after ESU secured the § 87(2)(b) apartment. They maintained that they were not able to see any interaction between any ESU officer and any civilian taking place before ESU finished securing the location.

§ 87(2)(g)

Allegation C—Force: Detective Daniel Keane struck § 87(2)(b) with a police shield.

Allegation D—Force: Detective Daniel Keane used physical force against § 87(2)(b)

§ 87(2)(b) stated that he was awoken by the sounds of officers yelling "Police" elsewhere in the apartment. He got out of bed and stood in front of his bedroom door with hands raised above his shoulders, waiting. ESU officers then entered the bedroom. § 87(2)(b) stood still and held his hands above his shoulders. He did not make any movement. An officer said, "Get on the floor." However, § 87(2)(b) was so shocked by the events taking place that he remained still. Det. Keane then struck him with a ballistic shield on the left side of his face.

After officers brought § 87(2)(b) to the floor, he lay chest-down. His head was turned to his right so that the right side of his face was upward. He lay still and did not resist. Det. Keane then placed his boot on the right side of § 87(2)(b)'s face. Det. Keane held his boot in this position for nearly one minute.

§ 87(2)(b) later discovered that he had an abrasion or laceration on his left cheek. He believed that this injury was caused by the ballistic shield striking his face. The injury had healed by the date of his CCRB interview. However, he took a photograph of the injury on the morning of January 21, 2018 (Board Review 14). In the photograph, a dark mark appears on his left cheek, near the cheekbone. However, it does not appear to be a new wound. There is also some blotchy discoloration on the left side of § 87(2)(b)'s face, but it is unclear if it is bruising. There is no apparent swelling.

Neither § 87(2)(b) nor § 87(2)(b) was in a position to see what took place inside of § 87(2)(b)'s bedroom when ESU officers entered. § 87(2)(b) stated that while she waited in the living room, officers briefly brought § 87(2)(b) into the same room. She did not notice any injury on his person at this time. However, § 87(2)(b) stated that when she visited the courthouse, where she attended § 87(2)(b)'s and § 87(2)(b)'s arraignments, she observed that § 87(2)(b) had a mark on his right cheek. § 87(2)(b) later told her that an officer had struck him with a plastic shield.

As noted above, Det. Keane did not recall the incident in question. He did not recognize the name § 87(2)(b) and did not recognize a photo of § 87(2)(b). Det. Keane denied striking any individual in the face with a ballistic shield or placing his foot on any individual's face during a search warrant execution on or about January 19, 2018. Det. Keane stated that he participated in approximately one hundred search warrant executions during his time with the ESU A-Team.

Also as noted above, neither Det. Mogelnicki nor Det. Vahey recalled the incident. The above-referenced ESU Warrant Execution Supplemental Report indicates that Det. Vahey apprehended § 87(2)(b) within his bedroom. However, Det. Vahey did not recall this. Both officers denied ever seeing Det. Keane strike an individual in the face with a ballistic shield or placing his foot on an individual's face.

According to the ESU ESD2 report pertaining to this incident, "There were no injuries to subject(s) or MOS reported at scene" (Board Review 15). Note also that no officer prepared a TRI Incident Worksheet in regard to this incident (Board Review 16).

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Allegation E—Abuse of Authority: Deputy Inspector Elliot Colon refused to show the search warrant to § 87(2)(b)

Allegation F—Abuse of Authority: Sergeant Charles Schwartz refused to show the search warrant to § 87(2)(b)

Allegation G—Abuse of Authority: Police Officer Peter Chiofolo refused to show the search warrant to § 87(2)(b)

Allegation H—Abuse of Authority: Police Officer Hector Casillas refused to show the search warrant to § 87(2)(b)

Allegation I—Abuse of Authority: Police Officer Hector Casillas refused to show the search warrant to § 87(2)(b)

§ 87(2)(b) stated that when DI Colon, Sgt. Schwartz, PO Chiofolo, and PO Casillas entered the apartment, he asked them why police officers had come to his home and if they had a warrant. The officers said that they had a search warrant. § 87(2)(b) asked all of the 67th Precinct officers to show him their search warrant, but they said that this would be difficult. No officer explained why they could not show the search warrant to him. Further, no officer ever showed the search warrant to § 87(2)(b)

§ 87(2)(b) stated that while § 87(2)(b) was still in his bedroom, he heard § 87(2)(b) ask, “Where’s the search warrant?” He then heard an officer say that they needed to wait for a sergeant to bring the search warrant because they did not have it. § 87(2)(b) believed that it was PO Casillas who said this. § 87(2)(b) also stated that while he and § 87(2)(b) waited in the living room, as PO Casillas passed by, he asked PO Casillas to show them the search warrant. PO Casillas again said that they needed to wait for a sergeant to arrive. However, no officer ever showed the warrant to § 87(2)(b)

As noted, § 87(2)(b) stated that while she waited in the living room, officers briefly brought § 87(2)(b) into the same room. § 87(2)(b) asked, “Where’s the warrant?” PO Casillas replied, “Don’t worry about the search warrant.” Additionally, while § 87(2)(b) and § 87(2)(b) waited in the living room, § 87(2)(b) asked PO Casillas where the search warrant was. PO Casillas replied, “It’s coming.” However, no officer ever showed the warrant to § 87(2)(b)

DI Colon, Sgt. Schwartz, PO Chiofolo, and PO Casillas each denied that either § 87(2)(b) or § 87(2)(b) ever asked to see the search warrant. Further, they denied ever refusing to show a copy of the search warrant to them.

DI Colon stated that officers executing a search warrant typically have a copy of the search warrant with them, but DI Colon did not know who carried a copy of the warrant during the incident in question.

According to Sgt. Schwartz, it is typical protocol for a sergeant to carry a copy of the warrant during any search warrant execution. However, Sgt. Schwartz did not remember if he carried a

copy of the search warrant during this incident. Sgt. Schwartz also stated that during any search warrant execution, he typically shows a copy of the search warrant to all of the occupants of the target location, whether or not they ask to see it, as this calms the occupants.

PO Chiofalo stated that he carried a copy of the search warrant with him during the incident. § 87(2)(b) asked PO Chiofalo why the officers were there, and PO Chiofalo told him that the officers had a search warrant for the location. However, § 87(2)(b) said nothing else and never asked to see the search warrant.

PO Casillas denied ever speaking with § 87(2)(b) or § 87(2)(b). Further, PO Casillas stated that he did not have a copy of the search warrant with him.

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Allegation J—Discourtesy: Deputy Inspector Elliot Colon spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after asking to see the warrant, he also told the officers that he did not know what was happening and was scared. DI Colon replied, “Shut the fuck up,” and told § 87(2)(b) that he was making his job more difficult. The other 67th Precinct officers were present at this time.

As noted, neither § 87(2)(b) nor § 87(2)(b) was in § 87(2)(b)'s bedroom at the time of this alleged interaction. Neither stated that they heard any officer use profanity toward § 87(2)(b).

DI Colon did not recall any of the apartment's occupants interfering with the officers' efforts to execute the search warrant or behaving in an uncooperative manner. Further, he denied saying to § 87(2)(b) “Shut the fuck up,” or using any profanity toward him. He did not recall interacting with § 87(2)(b) at all.

Sgt. Schwartz and PO Chiofalo each stated that they did not recall DI Colon saying to § 87(2)(b) “Shut the fuck up,” or using profanity at all. PO Casillas stated that he did not hear DI Colon say, “Shut the fuck up,” or use any profanity.

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Allegation L—Abuse of Authority: Police Officer Hector Casillas threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that PO Casillas brought him and § 87(2)(b) § 87(2)(b) outside of the building to a vehicle waiting outside. The officers allowed § 87(2)(b) to remain inside of the apartment. At the van, PO Casillas said that § 87(2)(b) would be arrested if § 87(2)(b) was not truthful about the contents of the apartment.

§ 87(2)(b) § 87(2)(b) stated that when officers brought him outside to a van, § 87(2)(b) was waiting in the same van. There, § 87(2)(b) said that in his bedroom, an officer had said that they could arrest both § 87(2)(b) § 87(2)(b) and § 87(2)(b). However, § 87(2)(b) § 87(2)(b) never heard any officer say this.

§ 87(2)(b) remained inside of the apartment and was not in a position to hear the alleged remark in question.

PO Casillas confirmed that § 87(2)(b) was never placed in handcuffs and was the only occupant of the apartment to remain inside for the duration of the officers' search. PO Casillas denied making any remark at any time about the possibility of § 87(2)(b) being arrested. Although she was an occupant of an apartment where illegal contraband was located, the officers did not believe the contraband to belong to her, and so there was no reason to arrest her.

PO Chiofalo stated that § 87(2)(b) was not arrested because § 87(2)(b) and § 87(2)(b) § 87(2)(b) were either found to be in possession of, or admitted to being in possession of, the contraband located within the apartment. If the officers had not been able to determine the ownership of the contraband, § 87(2)(b) would also have been arrested. However, PO Chiofalo did not hear any officer say to any of the occupant of the apartment that § 87(2)(b) could or would be arrested.

Neither DI Colon nor Sgt. Schwartz recalled § 87(2)(b)'s presence within the apartment or her involvement in this incident whatsoever.

PO Chiofalo prepared a memo book entry reading, "2 imitation pistols, 1 embosser, 1 credit skimmer, 6 blank 9 mm rds, 1 laptop, 4 drug paraphernalia, 2 bag of marijuana, 1 container of marijuana..." (Board Review 17). A UF-61 (Board Review 18), arrest reports (Board Review 19), criminal court complaints (Board Review 20), and property vouchers pertaining to the arrests (Board Review 21) also corroborate the officers' recovery of a contraband.

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) § 87(2)(b) or § 87(2)(b) has been a party (Board Review 22 and 23).
- DI Colon has been a member of service for 24 years and has been a subject in 13 other cases with 21 allegations (Board Review 24).
 - Case #9604418 involved substantiated allegations of force, threat of force, and unspecified discourtesy.

Reviewer:

Signature

Print Title & Name

Date